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IN THE

Supreme Court of the United States

No. 966

FRANK LLOYD PARKS,
Petitioner,

—v.—

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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February 24, 1970

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The United States, in its brief in opposition, indicates in footnote 5 at the bottom of page 9 that: "The *transcripts* of the tape *recordings* disclose that *most* of Parks' conversations consisted of relaying messages . . ." (Emphasis added). Unless the underlined words are typographical errors or mere slips of the author's pen, I am shocked and surprised to learn for the very first time that Crake recorded more than one conversation with Parks.

At the trial Crake first testified that the only conversations which he recorded were with the defendant Crisona (R-161).* On cross-examination he conceded that he thought ". . . there

* References are to the pages of the certified record, unless otherwise indicated.

was *one* conversation with Mr. Parks . . ." that he recorded (R-246). (Emphasis added.) When I pressed the question further Crake stated that "There is just one (recorded conversation with Parks) that I know of . . ." and that this conversation took palce about January 18, 1966 (R-247). He later stated that ". . . Mr. Fanning (the Assistant United States Attorney prosecuting the case) has told me this morning that I had one conversation in the transcripts with Mr. Parks . . ." (R-248). Though I do not have the reference to the page in the record at hand, my recollection of Crake's trial testimony was that he had turned over to Mr. Fanning, well before the commencement of the trial, all recordings of conversations he had had with the defendants. If, in fact, Crake recorded more than one conversation with Parks, then his testimony is, to say the least, inaccurate and the government, by not taking any action to correct that testimony, was a party to the suppression of evidence which, in my opinion, would have been beneficial to Parks' defense. Moreover, the government compounded its error by referring, on page 13 of its brief to the Second Circuit, to *one* conversation with Parks recorded by Crake.

The reference in the footnote mentioned above ". . . that most of Parks' conversations consisted of relaying messages . . ." is, perhaps, the most significant aspect of the brief. Parks' entire defense was that he was an innocent dupe, a messenger boy, who was badly used by a professional confidence man (Neiman). The government's characterization of Parks' function as apparently indicated by the recorded conversations with Crake is certainly not inconsistent with Parks' defense.

In my brief to the Second Circuit I devoted 20 of the 31 pages to a discussion of the insufficiency of the evidence

against Parks. I have only four copies of that brief left but I am submitting three of them to this Court with this reply, not for the purpose of rearguing the sufficiency question, but to demonstrate to this Court that there was, in my honest opinion, a very close question as to Parks' knowing participation in a criminal conspiracy. If that be the case then evidence such as recorded conversations showing Parks to be a mere relayer of messages would be critically important to the consideration by any jury of the question of his guilt.

The Second Circuit reviewed *transcripts* of all the tapes and found ". . . that they contain no *information* which could reasonably have been additionally useful to the defense . . ." (Emphasis added). But Parks wasn't looking for information in requesting the opportunity to hear the recordings. In fact, he was looking for just such harmless, seemingly insignificant conversations described by the government in its footnote to show that he was not an insider, that he was not a trusted member of the criminal conspiracy to whom matters of importance could be divulged, and that Crake knew or at least had an impression that Parks was not in the same category as the other officials of Colombia Resources.

A fair reading of Crake's testimony indicates an attempt by him to put Parks right into the middle of the picture. Parks was introduced to him on December 10, 1965, as an officer of Colombia Resources, who would be their liaison man for the loan sought by Crake's client and who would control disbursements from the control account that would be set up with a portion of the loan proceeds (R-49). Shortly thereafter, Parks, according to Crake, took some part in the

negotiations looking toward an agreement between Colombia Resources and Crake's client.

In disposing of Parks' claim of insufficiency the Second Circuit stated in its opinion (25a):

> "To summarize the most important facts: Parks was present at meetings among the conspirators at which the details of the scheme were planned and carried out . . ."

(Neiman, the government's star witness, testified concerning the meeting for the preparation of the fictitious balance sheet, a keystone of any success enjoyed by the conspirators, and Parks' presence thereat. When asked if Parks contributed anything to the preparation of the balance sheet Neiman stated that "I am not even certain that he [Parks] was aware exactly of what we were doing . . ." [R-1570, R-1571].)

> ". . . he received substantial shares of the proceeds of fraudulently obtained advance fees . . ."

(Neiman's testimony indicated that, during Parks' association with Colombia Resources, Parks received a total of $7,603 from the Company. Neiman also testified that Parks incurred considerable expenses on behalf of the Company and its officers and Parks' uncontradicted testimony was that his expenses, most of which were confirmed by exhibits, exceeded $9,000. In short, it actually cost Parks about $1,500 to work for the Company).

> ". . . he presented himself, or was presented, to various victims under aliases and in false capacities . . ."

(This is absolutely inaccurate. There is not one shred of testimony to support it).

> ". . . and made a variety of misrepresentations to these victims about Colombia Resources . . ."

(This would be true if Parks had reason to believe that the statements he made had no basis in fact. His defense was that he had no such knowledge).

> ". . . In the light of his intimate and prolonged connection with the other defendants and their illegal enterprise it is not surprising that the jury found unpersuasive his assertion that he was merely an innocent dupe."

(This last point presented the most serious challenge to Parks' defense, but it should be remembered that while Parks was associated with Colombia Resources over a period of some six months he did not devote anywhere near his full time to that business. He only made about three appraisals for them during that period and had nothing at all to do with most of the transactions mentioned in the indictment. Three of the six substantive counts of which Parks was convicted concerned themselves with Crake's client, Sunrise Mountain Corporation, and, under those circumstances, it is submitted that it was vitally important for the jury to know that there were recorded conversations which indicate that Crake considered Parks as nothing more than a relayer of messages. Certainly, if the Solicitor General could have concluded from his review of the transcripts that Parks was merely a relayer of messages and was considered to be such by Crake, a jury could have well reached the same conclusion from hearing the recordings and thus they might have given more credence to Parks' defense. Also, if defense counsel had had the opportunity to hear these recordings *before* cross-examining Crake, the tapes may have been of immeasurable assistance in controverting the impression left by Crake's testimony

that Parks was an active participant in a criminal conspiracy).

CONCLUSION

For the reasons indicated, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Second Circuit.

Respectfully submitted,

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February 24, 1970